82-1622

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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1982

PEOPLE EX REL SAMUEL BARUCH, Petitioner, vs. SHERIFF OF COOK COUNTY, Respondent.	On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District.

PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT FOR THE FIRST DISTRICT

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QUESTION PRESENTED FOR REVIEW

Whether the state appellate court erred in deciding that the trial court was correct in refusing to look at the supporting documents to determine whether petitioner had been substantially charged with an offense in Florida, where petitioner specifically requested the court to consider such documents and they had already been received into evidence.

PARTIES TO THE PROCEEDING IN THE APPELLATE COURT

1. Petitioner: Samuel Baruch
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2. Respondent: Sheriff of Cook County

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People ex rel Jourdan v. Donohue, 84 NY 438 7

OPINION BELOW

The Appellate Court of Illinois, First District, Fifth Division on May 14, 1982, denied petitioner's appeal. The opinion is reproduced in Appendix I.

JURISDICTION

The opinion of the Appellate Court was delivered on May 14, 1982. The petition for rehearing was denied on October 19, 1982. (Appendix II) The petition for leave to appeal to the Illinois Supreme Court was denied on February 1, 1983. (Appendix III)

This Court has jurisdiction to review the judgment of the Illinois Appellate Court by writ of certiorari by virtue of 28 U.S.C., Section 1257 (3).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment XIV, (1):

... nor shall any State deprive any person of life liberty, or property without due process of

law nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner, Samuel Baruch, was charged in the State of Florida with the crimes of sale of unregistered securities, sale of securities by an unregistered salesman and sale of securities by fraud.

Governor Thompson of Illinois, pursuant to the Florida warrant and whatever supporting documents were supplied him, issued a rendition warrant for the petitioner. Petitioner filed a petition for writ of habeas corpus before the trial court in Illinois, alleging that the supporting papers from the demanding state were legally insufficient. Subsequently, the trial court denied the petition, believing that the only decision for the court to make was whether or not an information or indictment had been returned.(R 8; App. I) The trial court refused to consider the supporting documents to determine whether or not the defendant had been substantially charged with a crime(s) by the State of Florida, even though the plaintiff

specifically requested the court to consider such documents. (R 7, 11, 12) The trial court held:

> "The only thing that we can go into is whether or not there has been an information or indictment returned by the State of Florida. (R 6) I can't go into the merits of the sufficiency of the matters contained in the information, so long as there has been an information returned. And, our governor has reviewed the information, reviewed the supporting documents, and based upon that he has issued his governor's warrant." (R 8, 9)

The petitioner appealed the trial court's refusal to consider the supporting documents to the Illinois Appellate Court. The Appellate Court in Baruch v. Sheriff of Cook County held that the trial court had no need to examine the supporting documents to determine that plaintiff had been substantially charged with an offense in Florida. (App I p. 15) This holding was made even though the petitioner specifically requested the trial court to examine the documents, and such documents had already been offered into evidence by the respondent.

ARGUMENT

WHETHER THE STATE APPELLATE COURT ERRED IN DECIDING THAT THE TRIAL COURT WAS CORRECT IN REFUSING TO LOOK AT THE SUPPORTING DOCUMENTS TO DETERMINE WHETHER PETITIONER HAD BEEN SUBSTANTIALLY CHARGED WITH AN OFFENSE IN FLORIDA, WHERE PETITIONER SPECIFICALLY REQUESTED THE COURT TO CONSIDER SUCH DOCUMENTS AND THEY HAD ALREADY BEEN RECEIVED INTO EVIDENCE.

The Appellate Court believes that since the information from Florida charged the plaintiff with an offense(s), the trial court could not look at the supporting documents in deciding a petition for writ of habeas corpus, even though the plaintiff specifically requested the court to do so. We believe that no other Illinois Appellate or Supreme Court has so held; further, that cases from other jurisdictions are contrary to the Appellate Court's ruling in the instant case.

The same Appellate Court that ruled in the instant case, held in People ex rel Agee v. Elrod, 93 Ill Ap 3d 1038, that when relator expressly challenges the sufficiency of the requisition papers, he raises the question of whether the

Governor of Illinois was justified in recognizing the demand made upon him. In Agee, supra, the Court stated on p. 147 of 418 N.E.2d 145,

> to assess the merits of relator's contention, a consideration of the language recited in the requisition and in accompanying documents is required.

Their holding in Agee, supra, is opposite and contrary to their holding in Baruch, supra. If the Court should consider the supporting documents to determine if they can explain and clarify the warrant, then the Court should be equally obliged to consider the supporting documents when it is alleged that they are contrary to and negate the warrant or information.

Cases from other jurisdictions further support petitioner's position. In Harris v. State, 257 Ala 3, 60 So. 2d 266, p. 269, the Supreme Court

stated:

> Should we hold that the recitals in the rendition warrant are conclusive, then it should logically follow that, should the chief executive on all occasions employ the magic words 'indictment' or 'affidavit' or 'information', the prisoner, in habeas corpus proceedings, would be forever barred to test the sufficiency of the extradition papers as a basis for issuance of the executive warrant. Such, of course, is not the law and the prisoner is allowed to traverse such recitals. So viewed, we think as a corollary, as a matter of law and as a matter of common sense, the State should also be permitted to show such matters in aid of the warrant.

Similarly, in People ex rel. Jourdan v. Donohue, 84 NY 438, the Court concluded that when the supporting papers are before the Court, it is the Court's duty to examine them to determine whether or not they are sufficient to justify the warrant of extradition.

Thus, the case law supports our position that it is error for the trial court to refuse to even look at the supporting documents to determine whether petitioner has been substantially charged with criminal offenses. When, as in the instant case, the petitioner made a timely request for the court to consider such documents, and such documents had already been offered and received into evidence, the error is compounded.

CONCLUSION

Petitioner prays that your Honors consider his complaints to be of sufficient constitutional magnitude to warrant this Court's review.

Respectfully submitted,

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APPENDIX I

Fifth Division
May 14, 1982

81-1511

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SAMUEL BARUCH, Plaintiff-Appellant, vs. SHERIFF OF COOK COUNTY, Defendant-Appellee.	Appeal from the Circuit Court of Cook County. Honorable Richard J. Fitzgerald, Judge Presiding.

ORDER DISPOSING OF APPEAL
UNDER SUPREME COURT RULE 23

Plaintiff, Samuel Baruch, was charged in the State of Florida with the offenses of sale of unregistered securities, sale of securities by an unregistered salesman and sale of securities by fraud. Pursuant to the Florida request for extradition based on a warrant and supporting documents, the governor of Illinois issued a rendition warrant for plaintiff. Plaintiff was then

arrested in Cook County, Illinois, and, thereafter, he filed a petition for writ of habeas corpus. After a hearing, the writ of habeas corpus was denied. Plaintiff appeals, contending that the trial court erred in refusing to consider the supporting documents as well as the indictment in making its determination that the petition for a writ of habeas corpus should be denied.

Allegedly, the aforementioned offenses committed by plaintiff in the State of Florida involved 3 victims and were committed between March 1, 1978, and April 3, 1978. As stated above, the governor of Illinois, pursuant to the Florida warrant and supporting documents supplied to him, issued a rendition warrant for plaintiff. After his arrest, plaintiff was released on bond in July of 1980 and hearings on his petition for a writ of habeas corpus took place on March 31,

1981, and May 21, 1981. During those hearings, the State offered into evidence the governor's rendition warrant and the supporting papers on which it is based. Counsel for plaintiff did not challenge whether the Florida information properly charged plaintiff with a crime but maintained instead that, if the court would examine the documents which accompanied the information, it would conclude that they were legally insufficient to support the issuance of an information charging plaintiff with security violations. These documents described certain promissory notes which were defaulted on by plaintiff and which were alleged by the State of Florida to be securities and were, therefore, to be registered. Plaintiff's counsel argued specifically that such a characterization of promissory notes by the State of Florida was improper since it would require every businessman

"to record every ninety day note he gets from a bank or every thirty day note he borrows from somebody ***." In response, the trial court pointed out that for purposes of a habeas corpus proceeding on a rendition warrant, it was proper only to consider whether there had been a valid information filed by the State of Florida. The court stated:

> "Your arguments are certainly well taken with respect to your attack upon the indictment or the information. But that is a matter that can't be litigated here in the State of Illinois. Go down to Florida; you have a perfect right to interpose an objection, to move to dismiss the information on the grounds it is insufficient to support a cause of action.
>
> In Illinois the only thing

we have to look at is whether or not there has been an information filed. We can't go into the merits of the case, or any defenses that you might want to make."

The trial court then denied plaintiff's petition for a writ of habeas corpus.

As stated above, plaintiff contends that the trial court erred in refusing to consider the supporting documents as well as the criminal information in deciding to deny his petition for a writ of habeas corpus, and that, even if the court had considered such documents, it erred in deciding that Florida had substantially charged him with criminal offenses. We cannot agree with these contentions.

The purpose of the extradition clause of the United States Constitution is to enable each state to bring offenders to trial as swiftly as possible in the state

where the alleged offense occurred. (Michigan v. Doran (1978), 439 U.S. 282, 287, 58 L. Ed. 2d 521, 99 S. Ct. 530; People ex rel. Hernandez v. Elrod (1981), 86 Ill. 2d 453, 456, 427 N.E.2d 1209.) Accordingly, interstate extradition was intended to be a summary and mandatory executive proceeding and the cause never contemplated that the asylum state was to conduct the kind of preliminary inquiry traditionally conducted between the initial arrest and trial. (Michigan v. Doran, 439 U.S. 282, 288.) Illinois courts have held that only 4 areas are properly within the scope of the trial court's inquiry in a habeas corpus proceeding. Those are: (1) whether the accused is a person named in the warrant; (2) whether he is substantially charged with the crime in the demanding state; (3) whether he is a fugitive from justice; and (4) whether the papers are

regular in form. People ex rel. Levin v. Ogilvie (1967), 36 Ill. 2d 566, 567, 224 N.E.2d 247.

Plaintiff's primary basis for his contentions on appeal is that the trial court refused to look at the supporting documents. However, since the information issued by the State of Florida indicated that plaintiff had engaged in several transactions which constituted violations of specific Florida statutes, we are of the opinion that the trial court had no need to examine the supporting documents to determine that plaintiff had been substantially charged with an offense in Florida. As stated above, plaintiff did not challenge the sufficiency of the information, but only that the conduct described in the information, when considered with the supporting documents, did not constitute an offense. Contrary to this allegation, our review of the

record on appeal indicates that the information was valid on its face, and therefore, conclusively established that plaintiff had been charged with criminal offenses by the State of Florida. Since under the extradition clause to the United States Constitution, courts of the asylum state are bound to accept the demanding state's judicial determination because the proceedings of the demanding state "are clothed with the traditional presumption of regularity" (Michigan v. Doran, 439 U.S. 282, 290), we must conclude that the plaintiff's contentions are without merit.

Plaintiff cites People ex rel. Ritholz v. Sain (1962), 24 Ill. 2d 168, 180 N.E.2d 464, in support of his argument. However, Ritholz is not applicable to the present situation. In that case, the demand presented by the governor of Michigan stated as its basis a complaint

and warrant whereby the relator was charged with the crime of offering and giving bribes to public officers with the intent to influence their acts. Nonetheless, the supporting papers indicated that the relator was convicted on those charges, that he then appealed, that he was admitted to bail pending the outcome of his appeal, and that he became a fugitive from justice by his failure to surrender himself upon the affirmance of his conviction. Our supreme court held that the difference between the recitals of the demand and the supporting papers resulted in a failure to literally comply with the requirements of the Uniform Criminal Extradition Act. Because of this, it affirmed the trial court's granting of habeas corpus relief.

Here, there is no such contradiction between the information and the supporting

papers. Plaintiff contends only that the supporting papers demonstrate that the State of Florida has erroneously determined that his conduct constitutes a violation of Florida law. In addition, our supreme court has refused to follow the Ritholz decision in subsequent cases. See, for example, People ex. rel. Brown v. Jackson (1971), 49 Ill. 2d 209, 212-13, 274 N.E.2d 17.

The judgment of the circuit court of Cook County, denying plaintiff's petition for habeas corpus relief, is therefore affirmed.

Dated at Chicago, Illinois, this 14th day of May , 1982.

WILSON, J., LORENZ and MEJDA, JJ., concur.

APPENDIX II

IN THE APPELLATE COURT, STATE OF ILLINOIS
FIRST DISTRICT

PEOPLE EX REL SAMUEL BARUCH, Petitioner-Appellant,	)	
vs.	)	No. 81-1511
SHERIFF OF COOK COUNTY, Respondent-Appellee.	)	

ORDER

Petition for Rehearing is denied.

ORDER ENTERED OCT 19, 1982

ENTER:

Justice-Francis S. Lorenz

Justice-James J. Mejda

Justice-Kenneth E. Wilson

Name
Attorney for
Address
City
Telephone

GILBERT S. MARCHMAN
CLERK OF THE APPELLATE COURT, FIRST DISTRICT

APPENDIX III

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
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February 1, 1983

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No. 57599 - Samuel Baruch, petitioner, vs. Sheriff of Cook County, respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal filed in the above entitled cause.

Very truly yours,

Clerk of the Supreme Court